

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

GARCIA GLENN WHITE,	§	No. 04:02-CV-01805
<i>Petitioner,</i>	§	
	§	Capital Case
v.	§	
	§	
BOBBY LUMPKIN,	§	Execution set for
Executive Director of Texas	§	October 1, 2024
Department of Criminal Justice	§	
Institutional Division,	§	
<i>Respondent</i>	§	

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RESPONSE TO EMERGENCY OPPOSED  
MOTION FOR SUBSTITUTION OF COUNSEL

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TO THE HONORABLE COURT:

On September 13, 2024, attorneys employed by the Capital Habeas Unit (CHU) of the Federal Defender's Office for the Western District of Texas filed a motion to substitute counsel in this matter. The Office of the Attorney General opposes the CHU's motion. Counsel for Garcia Glenn White (Counsel) has requested the Honorable Court to set the CHU's motion for a hearing. Counsel for Garcia Glenn White submits the following response to the CHU's motion for consideration by the Court.

1. COUNSEL REQUESTS A STAY OF EXECUTION

Counsel does not oppose *any* ruling by this Court, including substitution of counsel, that would include a stay of execution for Mr. White. Counsel is not necessarily opposed to CHU's motion to substitute as counsel for Mr. White. Counsel spoke with Mr. White after learning that the CHU intended to intervene in this matter. Mr. White advised Counsel that he wanted the CHU to represent him. Counsel respects Mr. White's decision, but wants to make sure that Mr. White has representation in all venues.

This Court should grant a stay of execution to determine the appropriate course of action when the CHU files an emergency motion to substitute counsel only in federal court when state court proceedings are still pending. Counsel seeks the Court's guidance in this matter as Mr. White's execution date is set for October 1, 2024 and Counsel needs clarification as to his role in future litigation.

2. Counsel has filed a subsequent application for writ of habeas corpus with the Court of Criminal Appeals. The writ is attached to CHU's motion for substitution of counsel. The CCA has not ruled on the writ. If the CCA grants a stay of execution and remands the matter for fact-finding, Counsel will still represent Mr. White in state court as the CHU has not moved to substitute counsel in either the CCA or the 180<sup>th</sup> District Court of Harris County, Texas. If the CCA denies the subsequent writ with an opinion, Mr. White may continue to litigate the matters raised in the writ in the federal courts. It is unclear whether Counsel would be able to litigate matters addressed by the CCA in which the CHU takes no interest.

3. Counsel notes that the CHU has again raised the issue of conflicted counsel as it did in the matter of Dexter Johnson. Although the facts of Mr. White's case raise different issues, the CHU's motion relies heavily on the District Court opinion of Judge Bennett in *Johnson v. Lumpkin*, 4:19-CV-3047. The CHU moved to substitute as counsel in Johnson's case by alleging ineffective assistance and a claim of conflicted Counsel. The District Court granted a stay of execution and a hearing to determine whether Johnson was entitled to equitable tolling to allow him to bring his claim of intellectual disability in federal court. In his October 2022 opinion, which is attached, Judge Bennett found that the doctrine of equitable tolling allowed Johnson to raise a claim of intellectual disability,

but also found that Counsel made strategic decisions involving the timing of Johnson's intellectual disability claim.

4. The Office of the Attorney General (AG) has appealed Judge Bennett's ruling to the 5<sup>th</sup> Circuit arguing that Judge Bennett has erred in two ways that are applicable here. First, the AG argues that Judge Bennett has found petitioners raising intellectual disability claims are not subject to a diligence requirement. Second, the AG argues that Judge Bennett has impermissibly broadened the exceptions that allow for equitable tolling by applying that doctrine although he recognized that Counsel had made a considered, strategic decisions on what claims to bring and when. It is unclear how the 5<sup>th</sup> Circuit will rule on these issues, particularly in light of the Supreme Court's decision in *Shinn v. Martinez-Ramirez*, 596 U.S. 366 (2022). The 5<sup>th</sup> Circuit has set the matter for oral argument on November 6, 2024. Given the allegations in the motion for substitution, the 5<sup>th</sup> Circuit's rulings in the Johnson's case must impact the Court's decision in this matter. A stay of execution is warranted while these very similar claims are litigated.

5. Counsel requests a hearing before the Honorable Court to address the CHU's motion to substitute counsel.

WHEREFORE, Counsel respectfully requests that the Honorable Court grant Mr. White a stay of execution, and set this matter for a hearing on the CHU's emergency motion to substitute counsel.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that on September 16, 2024, I electronically filed the foregoing request for hearing with the Clerk of the Court using the CM/EMF system and served the following parties with notice of the filing:

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